Privy Council Appeal No. 19 *of* 1933
Patna Appeal No. 33 *of* 1930

Maharaja Sir Kesho Prasad Singh Bahadur, since deceased (now represented by Maharaj Kumar Ram Ranbijoy Prasad Singh - - - - - - *Appellant*

v.

Bahuria Musammat Bhagjogna Kuer, since deceased, and others - - - - - - - *Respondents*

And four connected Appeals by the same Appellant.
Consolidated Appeals.

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST FEBRUARY, 1937.

Present at the Hearing:
LORD MAUGHAM.
SIR SHADI LAL.
SIR GEORGE RANKIN.
[*Delivered by* SIR GEORGE RANKIN.]

In this case five appeals remain to be decided, seven having been compromised. The plaintiff in suit No. 106 (appeal No. 35) was Bahuria Musammat Bhagjogna Kuer and the principal defendant was the then Maharaja of Dumraon. In the other four suits the Maharaja was plaintiff and the principal defendant was Babu Ramsarup Singh, Musammat Bhagjogna's husband. These original parties have all died and their place has been taken by representatives, but these changes in the record may be disregarded for the sake of brevity in expression. The suits arose out of proceedings taken by the tenants of certain agricultural lands near to the River Ganges and to the border line between the district of Shahabad in Bihar and Orissa and the district of Ballia in the United Provinces. By section 149 of the Bengal Tenancy Act a tenant, if sued for rent by a person whose title to the rent he does not admit, may pay the money into Court with a plea that the rent is due to a third person. The Court thereupon gives notice to the third person with a view to his bringing a suit against the plaintiff and obtaining an "order restraining payment out of the money." In the case of the five tenancies with which the present case is now concerned, the suits so brought raised the question of title to the lands of the tenancies, and were not confined to the question of the right to a particular amount of rent deposited.

The controversy between the Maharaja on the one hand and Bhagjogna and Ramsarup on the other hand, arises out of the fact that in the district in question the River Ganges has altered its course from time to time. Originally, on the northern bank, and in what is now the United Provinces of Agra and Oudh, there was a revenue paying estate called Mahal Sheopur Diar. As land accreted to this estate by the recession of the river towards the south another estate was settled called Sheopur Diar Numberi. In 1825 a further accretion of a large quantity of land had taken place and this in turn was made into a separate estate, Sheopur Diar Gangbarar (hereinafter called Gangbarar). The river continued to alter its course to the south and by 1851 still further accretion had taken place. At some date between 1851 and 1862 it returned to the north, flowing through the middle of Gangbarar, as indeed it still does. More land having thus emerged to the south of Gangbarar, a separate estate, Sheopur Diar Naubarar ("Naubarar") was formed in 1862 and settled with the owner of estate Gangbarar to which it had accreted. The main question at issue is: What land was thus settled in 1862? And it arises from the fact that in 1903, the proprietors of Naubarar having defaulted in payment of land revenue, the estate Naubarar was sold for arrears of revenue under the provisions of the Bengal Land Revenue Sales Act (XI of 1859) to a purchaser acting on behalf of the then Maharani of Dumraon. The rubakari, dated 11th September, 1903, confirming the sale under section 27 of the Act has been put in evidence, and from this it appears that the subject matter of the sale was "number 1504 Shibpur Diar Naubarar, parganah Bhojpur." By virtue of this purchase by his predecessor, the Maharaja of Dumraon claims to be entitled to the superior interest in the whole of Naubarar whatever its boundaries may be, and he claims that those boundaries include the lands of the tenancies which form the subject matter of the five suits now before the Board.

Ramsarup, on the other hand, on the 23rd March, 1920, and his wife Bhagjogna on the 8th December, 1915, purchased an interest in the estate Gangbarar. In this way each derives title as a co-sharer to a sub-division of Gangbarar Bhagjogna being co-sharer in patti Sheo Bux Singh and Ramsarup in patti Naunhid Singh. The lands of Gangbarar from long before 1903 have been distributed among some 17 pattis, and lands of each patti are also allocated to particular co-sharers in respect of their interest in the patti. Thus, for example, in Musammat Bhagjogna's suit she claims to have an interest of 1 anna 4 pies in patti Sheo Bux Singh, represented by a half interest in a Takhta of 2 annas 8 pies to which belong the lands comprised in her suit and held by the tenant defendants therein. She thus claims half the rent of these lands. The question of title is whether the land of the tenancies in suit belongs to Gangbarar or Naubarar, and if this question has to be answered in favour of the Maharaja a further question arises

for decision under article 144 of the Limitation Act of 1908, namely, whether the title which the Maharaja obtained by his purchase in 1903 has not come to an end by reason of the adverse possession of Bhagjogna and Ramsarup or their predecessors in title.

At the hearing of the suits the Maharaja was not able to call any evidence of the receipt by him of rent from any of the lands in question at any time since the purchase in 1903.

On the question of title the Munsif appointed a commissioner to find out which of the lands in the 12 suits then before him lay in Naubarar and which in Gangbarar, and by the writ of commission he directed the commissioner to decide this question by re-laying the map made by a Mr. Parker in 1912. The Maharaja in 1911 had brought a suit (No. 274 of 1911 afterwards numbered suit No. 4 of 1913), against a large number of co-sharer maliks of Gangbarar claiming a large tract of land as belonging to his estate of Naubarar. In that suit, however, the predecessors in title of Bhagjogna and Ramsarup were not impleaded. Mr. Parker, then district engineer of Shahabad, having been appointed commissioner in that case, heard evidence and made enquiries as a result of which he drew a map showing the boundary between Gangbarar and Naubarar. This map was ultimately the basis of the decree in the suit, a decree made in 1916 and confirmed by the High Court at Patna in 1919. An appeal to His Majesty in Council (No. 91 of 1923) was dismissed in 1925 "on the ground of incompetency" as an appeal against concurrent findings of fact. The controversy in the 1911 suit upon the maps and other documents which came into existence in 1862 and prior thereto may be stated as follows: Gangbarar, settled in 1825, was 13,977 bighas, 15 kathas. Its most southern plot, according to a map of 1840, was plot 920. In 1861 the whole area was found to be 16,855 bighas, 5 kathas, an addition of 2,877 bighas, 10 kathas. From this additional area a deduction was made of 2,307 bighas, 18 kathas "on account of the river and bhagar," of which 1,923 bighas was for the river and 384 bighas, 18 kathas for uncultivated bhagar, &c., leaving 569 bighas, 12 kathas. This is charged as worth Rs.4 per bigha (Rs.2,278-6-0) less Rs.70-14-0 as "rasum putwari" = Rs.2,207-8-0 of which one half is Rs.1,103-12-0, say Rs.1104. Now the river had by change of course covered lands of Gangbarar and the maliks had a claim for reduction in respect that the whole of their original 13,977 bighas, 15 kathas no longer existed above water. The question in the suit of 1911 was whether Naubarar settled in 1862 was 940 bighas only (of which 569 bighas, 12 kathas were cultivated and 384 bighas, 18 kathas were not), Gangbarar land extending southwards far enough to make up the 13,977 bighas, 15 kathas, or whether Gangbarar stopped at plot 920 as before, the whole of the land to the south of that plot being given to Naubarar, though the revenue was assessed on 569 bighas, 12 kathas

only, the maliks of Gangbarar and Naubarar being the same. The High Court, in 1916, held that Naubarar comprised 2,877 bighas south of plot 920, and that this was only assessed as 569 bighas by way of effecting a remission of the revenue payable on Gangbarar due to the maliks for diluvion. Of course, if this be right, any further accretions to the southward would belong to the maliks of Naubarar—i.e., after 1903 to the Dumraon raj, which as it happened owned the villages to the south. That the assessment of 1862 should have been made on the principle just stated is not perhaps very probable *a priori*. After 1903 it produced a remarkable result, and one cannot deny that there is room for dispute upon the matter. But on an elaborate review of the evidence and of the documents the Court arrived at that conclusion and there is no apparent force in the comment that the judgment gave the Raj 2,877 bighas and the map gave over 4,000. It does appear, however, from the High Court's judgment that the effect given by that Court to the settlement of 1862 was not the effect which certain revenue officials (tehsildars) gave to it in 1867. In 1903 and afterwards, as more than one learned Judge has in the subsequent litigations observed, there was " a good deal of confusion as to the exact location and extent of Naubarar " and their Lordships think it clear that by reason thereof the Raj was not put by the collector in 1903 in possession of the lands of the 1911 suit or of the present suits.

In the present case the Munsif having directed that Parker's map should be taken as the basis for deciding whether the land in suit lay in Naubarar or not, and the commissioner having reported that the lands now in question in the five suits before their Lordships were within the limits of Naubarar, the Munsif held that the Maharaja had proved his title to such lands subject to the question of adverse possession. On the question of adverse possession, however, he found that Bhagjogna and Ramsarup and their predecessors in title had proved adverse possession for more than 12 years and that accordingly the title of the Maharaja under the purchase of 1903 had come to an end.

The cases went on appeal to the Subordinate Judge who agreed with the Munsif's finding in favour of the Maharaja's title but considered that the documents relied upon by Bhagjogna and Ramsarup were insufficient to establish adverse possession for the necessary period. On appeal to the High Court of Patna (Ross and Scroope JJ.) it was held that the Maharaja had not proved that the lands in suit were within the boundaries of Naubarar and therefore failed on the question of title. The decision of the Subordinate Judge on the question of adverse possession was also reversed notwithstanding that the powers of the High Court were limited in the manner set forth by sections 100 and 101 of the Civil Procedure Code.

On behalf of the Maharaja it was argued that the decree of 1916 and Parker's map, though not binding upon the principal respondents in the present cases, were evidence against them of the boundary of Naubarar under sections 11

or 13 of the Indian Evidence Act, and that the symbolical possession given under the decree in the previous suit was given openly and was marked by boundary pillars set up in the neighbourhood to mark the boundary line. In addition it was said that in 1917, when the terms of the existing settlement of Government revenue were due to be revised, the Maharaja, as the result of proceedings of which the Gangbarar maliks including the principal respondents had notice, became liable for revenue to government upon the basis of Parker's map and for the whole of the lands delineated therein as comprising Naubarar, and that at the same time the revenue assessed on Gangbarar was reduced.

Since the Maharaja obtained his decree in 1916, three apportionment cases have been decided, i.e. suits (or groups of suits) brought by him claiming apportionment of rents due from tenants of lands lying partly in Gangbarar and partly in Naubarar as delineated by the decree. In two of these cases (No. 839 of 1918 and No. 340 of 1920) the claim failed as against Gangbarar maliks not parties to that decree, on the ground that it was not evidence against them and on the ground that adverse possession had in any case brought to an end the title of the Raj [cf. 6 Patna Law Times 214: 1926 All India Reporter, Patna 577]. In one of these two cases both Ramsarup and Bhagjogna were parties, and the Munsif in his judgment stated that on their behalf revenue chalans had been filed besides a host of decrees and plaints showing that they and their predecessors brought rent suits and got decrees [cf. exh. E. (22)]. The third case (No. 88 of 1922) concerned a plot of 52 acres out of which the Maharaja claimed some 43 acres as situated in Naubarar. A commissioner was appointed to ascertain how much of the tenancy lands were within Naubarar and for this purpose he decided tc accept the line of Mr. Parker marked by pillars. Musammat Bhagjogna was one of the defendants: Ramsarup was not. The learned District Judge on first appeal [cf. exh. A. (41)] considered that Parker's map was evidence in itself as the maker was dead and also because the revenue had been assessed in 1917 upon the basis of it; also that the judgments in the 1911 suit were admissible in evidence under section 13 of the Evidence Act. This judgment of 9th November, 1923, is in itself of no great importance for the present purpose since the High Court on second appeal proceeded on different grounds, but it influenced the Munsif in the suits now before the Board, who quoted it (30th August, 1924) as justifying him in proceeding upon the basis of Parker's map. The High Court (cf. 8 Patna Law Times 129) which had to deal with this question of fact on the footing that the decision of the District Judge was final save for error in law, ultimately ruled that the commissioner's finding as to area should be upheld. Without deciding whether Parker's map was evidence against the defendants who had not been parties to the suit of 1911, the High Court proceeded on the ground that there was other evidence before the amin which could support his finding. The erection of boundary pillars without objection and the revenue documents of 1917 were the items of other evidence mentioned.

The decree of 1916 was also followed by a suit for mesne profits (No. 265 of 1916) in which an enquiry was held as to which lands within the boundaries defined by the decree were in the possession of proprietors who had been made parties to that suit and mesne profits were allowed in respect of such lands only. No mesne profits were given for any lands of the present suits.

Before the Board as before the High Court the Maharaja relied upon certain registers kept under the United Provinces Land Revenue Act (III of 1901) as containing entries which are not only evidence in his favour but carry a statutory presumption of correctness upon the question whether the suit lands are within Naubarar. Certain sections of that enactment (including sections 33 and 40) are referred to in the judgment of Ross J., and Scroope J. has observed that there does not seem to be any presumption of correctness attached to khesras and khatiaunis under the Act. Clause A of section 32 refers to "a register of all the proprietors in the mahal including the proprietors of specific areas specifying the nature and extent of the interest of each." By section 33 (3) read with section 35 no change is to be made in respect of such entries save by order of the Collector or, in undisputed cases only, of the Tehsildar. By section 40 all disputes are to be decided on the basis of possession, and by section 41 boundary disputes are to be decided if possible on the basis of survey maps, if this be not possible then on the basis of actual possession. Under this section if it is not possible to decide as to possession, the person "best entitled" may be recorded. Section 44 provides: "All entries in the annual registers made under sub-section (3) of section 33 shall be presumed to be true until the contrary is proved."

It was contended on behalf of the Maharaja that the respondents must have accepted the correctness of Parker's map at the time when the order was made in the present suits for the appointment of a commissioner. The application for the commission and the writ of commission, are absent from the printed record before their Lordships; but the order of the Munsif dated 13th May, 1924, and the commissioner's report have been obtained and in view of these documents, the pleadings of the parties and the history of the dispute their Lordships find it impossible to hold that the respondents had given up the contention that Parker's map was wrong and was in no way binding upon them—a contention which was indeed their main plea. The Munsif discussed the law of the matter in his judgment and took the view that the decree of 1916 was admissible as evidence against the respondents in a passage which is inconsistent with the suggestion that the respondents had submitted to be bound by it. It becomes necessary, therefore, to consider carefully whether there is proper proof as against the principal respondents that the lands now in suit lie within the Maharaja's estate of Naubarar.

It is convenient to consider first whether the Maharaja can succeed upon the basis that to all the lands comprised

in his decree of 1916 he acquired a new, or independent, title in 1917 by reason of the proceedings to revise the revenue. This is faintly indicated at the end of paragraph 7 of his plaints, and the only evidence put forward in support of it seems to be the note inserted in the D Register (exh. A 38) of Naubarar. The contention has been dealt with more than once in the previous suits, and in their Lordships' view there can be no doubt that it is bad. There is no evidence of anything more than a revision of the amount assessed upon the mahal Naubarar as formed in 1862; and, if reference be made to the judgments in the suit of 1911 for the history of these estates, it will be seen that, according to the case of both sides and the documents put forward, the maliks of Gangbarar and the Maharaja as malik of Naubarar have permanent interest in their respective estates though by reason of special circumstances the revenue is not permanently fixed. The note made upon exh. A is not the record of, or primary evidence of anything decided by the revenue court of Ballia District but is a note made for the purposes of the Shahabad authorities in carrying out the new arrangement.

Before the Board the argument was put as a case of estoppel. It is said that the respondents stood by when in 1917, on the strength of his decree, the Maharaja's revenue was enhanced: indeed that at the same time the assessment on Gangbarar or certain parts of it was reduced. As the Maharaja had obtained possession of large tracts of land from certain Gangbarar maliks it is not surprising that in due course his assessment was revised and increased; but that Ramsarup and his wife were responsible for this by action or inaction in any way is neither proved nor probable. It is difficult to discover any basis of evidence for the suggestion of estoppel, which appears to be rested mainly upon the fact that the revision of revenue is made "in the presence of all the proprietors" (see paragraph 9 of the Maharaja's written statement). In their Lordships' view the Munsif and the High Court have rightly rejected these contentions as to the effect of the proceedings of 1917. Whether in the course of such proceedings or as a consequence thereof any entry has been made in a register so as to be evidence in favour of the Raj or even to carry a presumption of correctness are separate questions.

The map made by Mr. Parker—if looked at simply as a map and apart from the decree of 1916 and from the physical existence of pillars erected on the land in accordance with it—is not evidence against the respondents. The question of the limits of a particular revenue mahal is not a matter of public right or public or general interest so as to be within section 32 (4) of the Evidence Act, nor is Parker's map a published map generally offered for public sale or a map made under the authority of Government within section 36. It is on the contrary within the provision of section 83 that maps made for the purposes of any cause must be proved to be accurate.

The admissibility of the decree of 1916 is the next question. Whether based upon sound general principle or merely supported by reasons of convenience, the rule that so far as regards the truth of the matter decided a judgment is not admissible evidence against one who is a stranger to the suit has long been accepted as a general rule in English law. Exceptions there are but the general rule is not in doubt. A well known statement of it was given by Sir William de Grey (afterwards Lord Walsingham) in the *Duchess of Kingston's* case (1776) 2 Howell's State Trials, page 538 n and a striking instance of its application by the Board may be seen in *Natal Land Co* v. *Good* (L.R. 2 P.C. 121, 133). That the same rule applies in India though it is not expressly formulated in these terms may be seen from a reference to section 43 of the Indian Evidence Act, 1872, and the illustrations given thereunder. On the other hand apart from all discussion whether a judgment is or is not a "transaction" within the meaning of section 13 of the Evidence Act [cf. *Gujjee Lal* v. *Fattih Lal* (1880) I.L.R. 6 C. 171, *Dinomani* v. *Brojo,* 1901, 29 I.A. 24] the judgment of 1916, together with the plaint which preceded it and the steps in execution which followed, are evidence of an assertion by the Raj of the right which it claims to have acquired in 1903 and are thus admissible evidence of the right. There are undoubtedly cases in which a judgment is evidence of weight even against third parties. Thus in *Ram Ranjan Chuckerbutty* v. *Ram Narain Singh* (1894) 22 I.A. 60, a decree 80 years old dismissing a suit on the ground that the defendants had mokarai tenure, was cogent evidence of their ancient possession, of the rate of rent paid, and of their title having been long ago asserted successfully. And in *Dinomani* v. *Brojo* (*supra*) magisterial orders under section 145 of the Criminal Procedure Code were held to be admissible for and against every one when the fact of possession at the date of the order has to be ascertained. But the fact that a person not in possession of the land now in suit claimed in 1911 to have been entitled to it since 1903, is not by itself serious evidence of his right. There is and was no lack of assertion on the other side. It adds little or nothing that having got decree he took symbolical possession (dakhaldahani) or even that he set up boundary pillars well to the north of the land now in suit. The respondents could not prevent his doing these things and their rights are not in any way affected by them. Of course if it could be said that had the respondents the right they claim they would have at once challenged these acts by bringing a suit for a declaration of their title—some weight might be attached to the fact that they did not. But in the present case such an argument would be quite hollow. It is difficult to think that any Court would grant relief upon the sole basis of the plaintiff's assertion made against other parties and because the parties now impleaded waited to be sued. That on this basis alone possession should be disturbed would be indefensible especially in Ramsarup's cases seeing that he

was recovering decrees for rent in 1919 and 1920. Their Lordships find themselves in agreement with the observation of Ross J.:—

> " The judgment is not *inter partes*, nor is it a judgment ***in rem***, nor does it relate to a matter of a public nature. The existence of the judgment is not a fact in issue; and if the existence of the judgment is relevant under some of the provisions of the Evidence Act it is difficult to see what inference can be drawn from its use under these sections."

Serious consequences might ensue as regards titles to land in India if it were recognised that a judgment against a third party altered the burden of proof as between rival claimants, and much " indirect laying " might be expected to follow therefrom.

A very important feature of the case must here be borne in mind. The evidence before the Board does not enable their Lordships to see how near in each case the lands now in dispute lie to the boundary line drawn in 1916, but in three of the suits against Ramsarup the plaint lands were found by the commissioner to include some lands of Gangbarar, which would seem to involve that the lands now in question in these suits are at the very extremity. In the two other suits also this may very well be the case. Accordingly it is anything but certain that any of the defendants in the previous suit had an interest even indirectly in the exact line drawn at these particular points. The lands now in suit are only small areas out of the large tracts then disputed and lie in all probability on the outside edge thereof.

So far as Ramsarup is concerned, whether or not he has proved possession for 12 years adverse to the Maharaja, their Lordships consider that he has proved that he was in possession of the maliki interest which he claims at the time when the Maharaja brought these four suits against him in August, 1923. Apart from any antecedent probabilities arising from the fact that the Maharaja had never had possession, or from the fact that the lands now in question were excluded from the decree for mesne profits as being held by a Gangbarar malik not party to the suit of 1911, he has proved in three of the suits that he had recently recovered rent decrees: and, though in suit No. 111 there was no such special evidence, he gave oral evidence before the Munsif (not included in the paper-book) produced his sale-deed of 1915 and a certified extract from katiauni jamabandi for 1917 showing the tenant defendants of that suit (No. 111) recorded as holding under his share of the patti Naunidh Singh [exh. E. 21]. In these four suits the Maharaja is really a plaintiff suing in ejectment and must give proper proof of his title as against a defendant in possession. The position of Bhagjogna is different.

No doubt in 1917 there came into existence entries in public records consequent upon the decree of 1916. These entries are admissible under section 35 of the Evidence Act, but, as Ross J. has pointed out, the entries to be made under the United Provinces Act III of 1901 are intended to be based upon the facts as to possession (section 40) and it

is plain enough that the Raj was not in possession of the lands now in suit. On their merits as evidence these entries add nothing. Apart from the particular provisions of Act III entries in such Government records are evidence of title mainly because they are good evidence of possession, but if contrary to the facts as to possession at the time they were made they carry little, if any, weight. This would be specially applicable to entries made by the tehsildar as of routine and without notice to any parties interested to oppose their being made.

In the argument before the Board it was suggested that the learned Judges of the High Court had altogether failed to notice section 44 of the United Provinces Act (III of 1901) but their Lordships do not so read either of the two judgments. The paper-book prepared for the purposes of this appeal contained no document, carrying a statutory presumption of correctness, to which the appellant could point as containing a statement to the effect that the lands now in suit are part of the mahal Naubarar. A main purpose of the opportunity given by their Lordships at the end of the hearing on 28th July, 1936, for the addition to the paper-book of further documents was that the appellant might lay before the Board any entry made under section 33, sub-section (3) of Act III to which he could point as containing that statement. Such entries alone attract the statutory presumption of correctness under section 44 of the Act.

No such entry appears among the further documents since obtained from India. Hence even if it be assumed that the presumption would remain when the facts as to possession were established the appellant can take no advantage from section 44.

Their Lordships have not merely to consider whether there is some evidence in support of the view that the suit lands lie within the Maharaja's mahal of Naubarar. The learned Subordinate Judge, in coming to his finding of fact upon this point in agreement with the Munsif, does not appear to have observed that the commissioner was directed to accept Parker's map as correct, and did not in their Lordships' view direct himself accurately as to the purposes for which the map could be used as evidence against the respondents. The High Court in their Lordships' view was entitled to entertain afresh this question of parcels notwithstanding that they were exercising jurisdiction in second appeal. The question now is whether the High Court are shown to have been wrong in their finding. Their Lordships are of opinion that they arrived at a correct conclusion upon this part of the case. Indeed in the circumstances of the case it was hardly reasonable on the part of the Raj as plaintiff in the four suits against Ramsarup to expect to succeed without proving afresh as against him the particulars of the settlement of 1862 when Naubarar was formed into a separate estate.

As already noticed the position of Bhagjogna is different from her husband's. In suit 106 she is plaintiff

and it is for her to prove her title to the lands of that suit. She claims a half interest in a plot of some 5 bighas let out to tenants at a rental of about Rs.42 per annum. The khewat for 1921 (D. 10) is produced and item No. 6 shows her purchase in 1920 of a share (1 anna, 4 pies) in patti Sheo Buksh Singh the rental being given as Rs.45-1-10. This very same interest was excluded in 1919 from the mesne profits suit as appears from section B to the commissioner's report therein [exh. 3]. The Munsif relied on exh. D. 1, D. 2 and D. 4 which are khesras and a "Jild Bandobust" (D. 3) which are either not included or are not identifiable in the paper book; he appears to have considered that one Jaigeshri Lal was a vendor to Bhagjogna in respect of the lands of suit 106, and he referred to two decrees obtained by him for rent in 1890 and 1895; also a plaint in 1890 in a rent suit. Their Lordships have, however, been unable to discover any proof that Jaigeshri Lal was a predecessor in title of Bhagjogna or that the plaint and decrees have any reference to the lands of this suit, these somewhat ancient matters being all strenuously denied on behalf of the Maharaja. From her plaint it appears that Bhagjogna herself cannot have collected any rent from these lands because in answer to the Maharaja's rent suit in 1922 the tenant defendants deposited the rent from 1919-22. In her title deed of 8th December, 1920 (exh. D) her vendors explain that the lands sold were sandy and unprofitable. It is fair to add that her husband appears from the Munsif's judgment to have given oral evidence on her behalf, and might and should have been cross-examined on the objections now taken to her title. His evidence, however, has not been included in the paper-book. The Munsif and Ross J. gave some weight to the fact that in a previous suit about apportionment of the rent of other lands, she put in evidence chalans, plaints and decrees showing possession by her vendors; but it is difficult to assume that they would be found to have reference to the lands of the present suit (No. 106) or to see that she has any valid excuse for not producing them once more.

In this state of the evidence their Lordships think it impossible to hold that Bhagjogna as plaintiff has proved her title as against the Maharaja. Whether the interest which, in 1920, she purchased in patti Sheo Buksh Singh or the interest which, in 1903, the Maharaja purchased in mahal No. 1504 gives title to the land in suit depends entirely upon the question whether the land lies within the one mahal or the other. She as plaintiff must produce proof upon this point unless she is to succeed entirely on the ground of adverse possession. It may be—their Lordships do not decide—that, so far as regards the mere claim to the deposited rents for 1921-22, she could succeed by giving proof of possession of the maliki interest in the particular lands of her suit and relying upon the Maharaja's failure to prove his title (cf. *Jadub* v. *Sm. Khemankari* (1903) 8 C.W.N. 248). But her evidence of her predecessors'

receipt of rent from the lands of suit 106 is of the most tenuous and dubious character and quite insufficient for this purpose.

Upon the question of adverse possession their Lordships being concerned only with five suits have a more limited enquiry than that which was necessary before the Courts in India. Having found that prior to the sale in 1903 the respondents' predecessors, maliks of Gangbarar, were in possession of the lands now in question, Ross J. expressed his view thus:—

> "The Raj not having taken delivery of possession after the revenue sale, the presumption is that possession continued as before, and this presumption is borne out by the fact that a suit for possession was brought in 1911 and also by the pleading, in paragraphs 5 and 6 of the written statement (of the Maharaja), that he got into possession of the property in dispute by bringing a suit in Court."

Their Lordships cannot agree that this approach to the present question is accurate. If it be once shown that the lands in dispute passed by the revenue sale of 1903 there can in law be no presumption that, contrary to the purchaser's rights, the old proprietors remained in receipt of rent from the agricultural tenants. Any possession which the old proprietors may have exercised after the sale would no doubt be adverse to the purchaser, but they must prove that they continued in possession and it does not appear that it is possible for them to prove possession save by proving that they received rents from the tenants notwithstanding the sale. No doubt, if at some date rent was received by them in respect of a previous period subsequent to the sale, a question may arise whether this receipt does not evidence possession by the tenants on behalf of the old proprietors since the date of the sale; but proof of receipt of rent would seem to be necessary if the old proprietors are to make out a case that the purchaser's title has come to an end by reason of their adverse possession. It is important, however, to notice that proof of receipt of rent may be indirect, for example, public records showing that A.B. was in possession of the maliki interest may or may not be sufficient in any particular case. So far as regards the five tenancies now before their Lordships, it is difficult to impugn the accuracy of the view taken by the learned Subordinate Judge that the evidence given is neither satisfactory nor sufficient to prove 12 years adverse possession. In Bhagjogna's suit the only decrees proved have reference to a period prior to 1903. In Ramsarup's cases proof of adverse possession no longer matters but it may be noted that in suit 110, he proved one rent decree obtained in 1920 in respect of the years 1916-19. In suit 111 there seems to be no proof of any rent decrees. In suit 112 there were two rent decrees, one in 1911 and one in 1919. In suit 113 there was one rent decree in 1920. Ramsarup's case is but slightly strengthened by khatiaunis or khasras. No doubt in the circumstances of the present case (referred to in the passage which their Lordships have

just quoted from the judgment of Ross J.) the mere fact that many years after the sale the Gangbarar maliks or persons deriving title from them are obtaining rent for the land is in itself very significant. Even in a locality exposed to diluvion by the action of the river this circumstance alone might be given considerable weight. But without sufficient proof to cover the intervening years it was most reasonably held by the learned Subordinate Judge to be insufficient. The circumstance that the Maharaja was not in possession or in receipt of rent is, it need hardly be said, insufficient under article 144 to warrant a finding of adverse possession on behalf of the respondents or their predecessors in title. Their Lordships are of opinion that on the materials produced it cannot be contended that the learned Subordinate Judge was obliged in law to find that the possession of the principal respondents had "all the qualities of adequacy, continuity and exclusiveness" [*per* Lord Shaw *Krishnan* v. *Peringati* (1921), 26 C.W.N. 666 at 673] necessary to displace the title of the Maharaja, and they think that no reason in law exists why his finding of fact in this respect should not be final.

Their Lordships will humbly advise His Majesty that the appeal should be allowed in respect of Bahuria Musammat Bhagjogna's suit (suit No. 106), that the decree of the High Court therein be set aside and the decree of the Subordinate Judge restored: that in respect of the other suits this appeal should be dismissed. The appellant will get from Musammat Bhagjogna his costs of the appeal to the High Court in suit No. 106. The appellant will pay to the respondents who appeared three-fifths of their costs of this consolidated appeal.

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In the Privy Council

MAHARAJA SIR KESHO PRASAD SINGH BAHADUR, SINCE DECEASED (NOW REPRESENTED BY MAHARAJ KUMAR RAM RANBIJOY PRASAD SINGH)

v.

BAHURIA MUSAMMAT BHAGJOGNA KUER, SINCE DECEASED, AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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